

APPEAL NO. 040210
FILED MARCH 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 17, 2003. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) compensable injury of _____, extends to and includes degenerative arthritis of the left knee that led to total knee replacement surgery. The appellant (self-insured) appeals, contending that the hearing officer's decision is against the great weight of the evidence and that the hearing officer erred in excluding the telephonic testimony of its peer review doctor. The claimant asserts that the evidence supports the hearing officer's decision.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable left knee injury on _____, when a patient she was assisting from a wheelchair to a bed fell back onto her. Conflicting evidence was presented at the CCH on the disputed issue of whether the compensable injury sustained on _____, extends to and includes degenerative arthritis of the left knee that led to the left total knee replacement surgery. The claimant's treating doctor reported that the work-related left knee injury of _____, markedly exacerbated and expanded the underlying degenerative changes in the claimant's left knee, and that without the work-related injury of _____, it is unlikely that the claimant would have required a left total knee arthroplasty. The designated doctor reported that the claimant's injury falls in the category of an aggravation of a previous underlying chondromalacia of the knee. The self-insured's peer review doctor reported that the claimant's current left knee condition is a preexisting condition, that the claimant's degenerative changes in her left knee could not have developed within one month of the injury, and that the claimant's total left knee replacement is not related to the injury of _____.

It has been held that, to the extent that the aggravation of a prior injury or condition caused damage or harm to the physical structure of the employee, the resulting condition falls within the meaning of injury as defined by the 1989 Act. Cooper v. St. Paul Fire & Marine Insurance Company, 985 S.W.2d 614 (Tex. App.-Amarillo 1999, no pet.). The hearing officer found that the degenerative conditions that required the claimant to undergo a total knee replacement surgery in June 2003 were enhanced and accelerated by the compensable injury of _____, and that the compensable injury of _____, aggravated the claimant's preexisting knee injuries to the point that knee replacement surgery was indicated. The hearing officer concluded that the compensable injury sustained on _____, extends to and includes degenerative arthritis of the left knee that led to a total knee replacement surgery. The hearing officer is the sole judge of the weight and credibility of the

evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

To obtain reversal of a decision based upon error in the admission or exclusion of evidence, the appellant must show that the evidentiary ruling was in error, and that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 91003, decided August 14, 1991. We cannot conclude that error, if any, in the exclusion of the testimony of the self-insured's peer review doctor has been shown to amount to reversible error in the instant case because the seven-page report of the peer review doctor was in evidence and in that report the peer review doctor states his opinions and provides the basis for those opinions. Thus the peer review doctor's opinion was in evidence for the hearing officer to consider along with the reports of the treating doctor, designated doctor, and other doctors. Under the particular circumstances of this case, we cannot conclude that reversible error has been shown.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1021 MAIN STREET
HOUSTON, TEXAS 77002.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge